3 months after the entry of the chargor's caveat. These events which could lead to the question of indefeasibility and notice are again matters to be dealt with at a proper trial.

Considering all the issues raised by the chargor and the reply deposed to by the chargees, we are satisfied that there exists conflict of evidence, which appears to us on the face of it not to be inherently improbable. We are of the view that such conflict cannot be disposed of on the basis of the affidavit evidence alone and that such conflict should be determined at a proper trial. We agree with the chargor's Counsel's submission that the evidence before the Judge left serious questions to be tried and that he should have maintained the *status quo* between the parties until the determination of these disputes.

We therefore allow this appeal, set aside the order of the High Court and direct the cavet to remain until the final disposal of suit No. S-3-22-63-1991. The respondent shall pay the cost here and in the Court below. The deposit is to be returned to the appellant/chargor.

LEONG WAN YING @ LEONG MUN YING & ANOR.

v.

ABDUL JABBAR BIN ABDUL MAJID & ANOR. (RECEIVERS AND MANAGERS OF LEMO SDN. BHD.)

SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' HARUN BIN MAHMUD HASHIM, DATO' PEH SWEE CHIN, DATUK WIRA WAN YAHYA BIN PAWAN TEH SCJJ
[CIVIL APPEAL NO. 02-400-1991]
6 MAY 1994

INJUNCTION: Supreme Court granting injunction restraining disposal of land without leave of High Court - Receivers and managers applying for and obtaining leave from High Court - Whether leave properly granted - Whether granting of leave was in breach of Supreme Court injunction.

The appellants were the majority shareholders of Lemo Sdn. Bhd. (Lemo). The appellants and another entered into a sale and purchase agreement with one Nestra Plantations Sdn. Bhd. (Nestra) for the sale of their respective shares in Lemo. Upon Nestra's failure to pay the full purchase price, the appellants sued for the purchase price of the shares, which suit (the Seremban suit) has yet to be heard.

The appellants subsequently applied for the appointment of a Receiver to manage Lemo, with a view to its continuation as a going concern, until the disposal of the Seremban suit. This was done so as to safeguard Lemo's only asset, an oil palm plantation (the Land). The appellants' application was granted but on appeal the Supreme Court vacated the High Court order by consent and granted an injunction restraining Nestra and Lemo from disposing of the Land without leave of the High Court, until the final disposal of the Seremban suit filed by the appellants.

On 11 May 1989 the Receivers and Managers, appointed by the Bank under the provisions of the two debenture agreements signed by Lemo, applied for leave to dispose of the Land. The learned Judge held that the appellants had no *locus standi* to object to the application as they had ceased to be shareholders of Lemo and granted leave to the Receivers on the grounds that to sell the Land by private treaty would not be in breach of the Supreme Court injunction.

Held:

[1] Whilst it is true that the injunction makes provision for the respondents to apply for leave, the primary purpose of the injunction should be taken into consideration, which was that the *status quo* be preserved until the final disposal of the Seremban suit. The leave provision was included for special circumstances that may arise. Both in the Court below and here, there were no special circumstances that would justify granting the leave which will in effect result in dissolving the injunction.

[2] The learned Judge's finding that the appellants had no *locus standi* was premature as the question of whether the appellants had ceased to be shareholders of Lemo is an issue of fact and law to be decided in the Seremban suit.

[Appeal allowed with costs. Order of High Court granting leave set aside. Injunction to remain in force until final disposal of the Seremban suit].

[Bahasa Malaysia Translation of Headnote]

INJUNKSI: Mahkamah Agung memberikan injunksi menghalang pelupusan tanah tanpa kebenaran Mahkamah Tinggi - Penerima dan Pengurus memohon untuk dan memperolehi kebenaran daripada Mahkamah Tinggi - Sama ada kebenaran diberikan dengan sewajarnya - Sama ada pemberian kebenaran melanggar injunksi Mahkamah Agung.

Perayu merupakan pemegang saham majoriti Lemo Sdn. Bhd. (Lemo). Perayu dan seorang lagi telah menandatangani perjanjian jual-beli dengan Nestra Plantations Sdn. Bhd. (Nestra) bagi menjual saham masing-masing dalam Lemo. Atas kegagalan Nestra untuk menjelaskan dengan penuh harga belian, perayu telah menyaman untuk harga belian saham-saham tersebut, di mana guamannya (guaman Seremban) masih belum dibicarakan lagi.

Perayu kemudiannya memohon untuk perlantikan seorang Penerima bagi menguruskan Lemo, dengan pandangan untuk meneruskannya sehingga guaman Seremban diselesaikan. Ini dilakukan untuk melindungi satu-satunya aset Lemo iaitu sebuah perladangan kelapa sawit (Tanah tersebut). Permohonan perayu telah diberikan, akan tetapi setelah dirayu Mahkamah Agung mengosongkan perintah Mahkamah Tinggi dengan persetujuan dan memberikan injunksi menghalang Nestra dan Lemo daripada melupuskan Tanah tersebut tanpa kebenaran Mahkamah Tinggi, sehingga guaman Seremban yang difailkan oleh perayu diselesaikan dengan muktamadnya.

Pada 11 Mei 1989 Penerima dan Pengurus, yang dilantik oleh Bank di bawah peruntukan-peruntukan dua perjanjian debentur yang ditandatangani oleh Lemo, telah memohon untuk kebenaran bagi melupuskan Tanah tersebut. Hakim yang bijaksana tersebut memutuskan bahawa perayu tidak mempunyai *locus standi* untuk membantah permohonan tersebut memandangkan mereka telah berhenti daripada menjadi pemegang saham Lemo dan memberikan kebenaran kepada Penerima atas alasan bahawa menjual Tanah tersebut melalui triti persendirian tidak melanggar injunksi Mahkamah Agung.

Diputuskan:

[1] Walaupun benar bahawa injunksi tersebut memberikan peruntukan kepada responden untuk memohon kebenaran, tujuan utama injunksi tersebut haruslah diambilkira, di mana *status quo*nya mestilah dikekalkan sehingga guaman Seremban diselesaikan dengan muktamadnya. Peruntukan kebenaran disertakan untuk keadaan khas yang mungkin timbul. Dalam kedua-dua Mahkamah di bawah dan di sini, tiada sebarang keadaan khas yang mungkin menjustifikasikan pemberian kebenaran yang mana akan membawa kepada pembubaran injunksi tersebut.

[2] Pendapat Hakim yang bijaksana tersebut bahawa perayu tidak mempunyai *locus standi* adalah terlalu awal memandangkan persoalan sama ada perayu telah berhenti daripada menjadi pemegang saham Lemo merupakan suatu isu fakta dan undang-undang yang perlu diputuskan dalam guaman Seremban.

[Rayuan dibenarkan dengan kos. Perintah Mahkamah Tinggi yang memberikan kebenaran diketepikan. Injunksi akan kekal berkuatkuasa sehingga guaman Seremban diselesaikan dengan muktamadnya].

For the appellants - M. Nagarajah (Dzulqarnaine Abu Bakar with him); M/s. Shook Lin & Bok
For the respondents - Izabella de Silva; M/s. Chooi & Co.

JUDGMENT

Harun Bin Mahmud Hashim SCJ:

In 1979, the State Authority of Trengganu alienated 1,000 acres of land to Lemo Sdn. Bhd.

(Lemo) for the cultivation of oil palm. In the same year the State Authority conditionally approved a further 1,000 acres for the same purpose upon satisfactory completion of planting the first 1,000 acres.

The shareholders of Lemo were:

Leong Wan Ying @ Leong Mun Ying	- 49%
Mohamed bin Abu Bakar	- 30%
Hashim bin Ismail	- 18%
Dato Haji Wan Hassan b. Abdul Halim	- 3%

In 1980 Lemo obtained a loan of RM4,100,000 from Bank Pertanian Malaysia (the Bank) to develop the land as an oil palm plantation. The loan facilities were secured by two debentures dated 19 August 1980 and 16 December 1982 respectively in addition to a charge on the land.

On 8 April 1981, Leong, Mohamed and Hashim entered into a sale and purchase agreement with Nestra Plantations Sdn. Bhd. (Nestra) for the sale of all their respective shares amounting to 485,000 out of 500,000 issued shares. The authorised capital of Lemo then was RM4,000,000 divided into 4,000,000 ordinary shares of one ringgit each. The purchase price of the 485,000 shares was RM2,813,000.

The sale and purchase agreement provided for 10% of the purchase price to be paid to the vendors on the execution of the agreement and the balance in equal instalments over a period of 4 $^{1}/_{2}$ months. Nestra failed to pay the full purchase price for the shares resulting in Leong and Hashim suing Nestra in Seremban High Court Civil Suit No: 250/81 for the purchase price of the shares. This suit has yet to be heard.

By the end of 1984, the 2,000 acres had been fully planted except for 55 acres including land set aside for nursery and buildings. The plantation is the only asset of Lemo. In 1985, the indebtedness of Lemo was RM5.6 million and it was attempting to create a second charge for the purpose of borrowing a further RM1.4 million although the plantation was already generating income from its mature acres.

On 2 September 1985, Leong and Hashim applied to the Court in the Seremban suit for an order that:

(1) the official receiver without giving security or some other person on giving security be appointed as receiver of assets and undertakings of Lemo Sdn. Bhd. and to manage Lemo Sdn. Bhd. with a view to its continuance as a going concern until Judgment in this action.

(2) the defendant do forthwith deliver to the receiver so appointed all the stock in trade and effects of the business together with all deeds, documents, books and papers relating thereto of Lemo Sdn. Bhd.

In the event, on 18 March 1986 the High Court ordered:

> that the official receiver, Malaysia be and is hereby appointed with immediate effect as receiver and manager without giving security of the assets and undertaking of Lemo Sdn. Bhd. and to manage Lemo Sdn. Bhd. with a view to its continuance as a going concern until judgment in this suit.
>
> And it is ordered that Haji Marzuki bin Razalli do continue as the plantation manager but the official receiver be at liberty to apply in regard thereto.
>
> And it also ordered that the defendants do forthwith deliver to the official receiver so appointed all the stock-in-trade and effects of the business together with all deeds, documents, books and papers relating thereto to Lemo Sdn. Bhd.

On appeal by Nestra and Lemo this Court by consent on 20 August 1986 vacated the order and ordered that:

> the appellants Nestra Plantation Sdn. Bhd. and Lemo Sdn. Bhd. shall not without the leave of the High Court whether by themselves, their servants, agents or directors or howsoever sell, transfer, charge, lease or otherwise deal in or encumber the land held under R.S. (D) Kemaman 398 for P.T. 757P in the Mukim of Tebak, District of Kemaman, State of Trengganu until the final disposal of Seremban High Court Suit No. 250 of 1981 **And it is further ordered** that the appellants do pay to the respondents the costs of this appeal to be taxed by a proper officer of the Court **And it is further ordered** that the sum of RM500 (Ringgit five Hundred only) deposited into Court by the appellants as security for costs of this appeal be paid out to the respondents to account for taxed costs **And** it is further ordered that the terms of this order shall not apply to the charge in escrow created by Lemo Sdn. Bhd. on 19 August 1980 over the second phase of its plantation described in recital (v) of the sales & purchase agreement dated 8 April 1981 between the first appellant of the one part and the respondents of the other part And it is lastly ordered that the parties be at liberty to apply.

On 11 May 1989, the receivers and managers of Lemo applied to the High Court at Kuala

Lumpur for leave to lease, grant licence or to sell the land at such price and in such manner as the receivers and managers think fit.

On 9 September 1991 the High Court granted the aforesaid application. It is against this order that Leong and Hashim have appealed to this Court.

The receivers and managers of Lemo were appointed by the Bank on 21 October 1989 pursuant to the powers contained in the two debentures as a result of Lemo's default in not servicing the loans. The application to the Court to deal with the land in the manner proposed and approved by the Court is in accordance with the terms of the debentures. The application, however, had to be made in view of the interim injunction of this Court.

Leong and Hashim (the appellants) object and now appeal against the order on the grounds that Nestra, as purchasers of the Lemo shares under the 1981 sale and purchase agreement, were in default of the agreement and had sought relief in the Seremban High Court for a declaration that the said agreement is null and void, repudiated, terminated and for the return of the share certificates and instrument of transfer of shares held by the common solicitors in escrow and whilst the suit was pending the High Court had appointed the official receiver to safeguard the only asset (the land) of Lemo. As previously observed, this appointment has since been vacated by the consent order of this Court, but the Seremban suit is still pending. There have been several intervening applications including the fact that one of the parties had been adjudged bankrupt and Lemo itself had been wound-up by order of Court on 28 February 1993.

The learned trial Judge held that the appellants had no *locus standi* to object to the application because they had ceased to be shareholders of Lemo. We are of the view that this finding is premature as it is an issue of fact and law to be decided in the Seremban suit. Further, the appellants still remain the plaintiffs in that suit and are also parties in the interim injunction issued by this Court.

The learned Judge further held, *inter alia*, that the granting of leave to the respondents to sell the land by private treaty will not be in breach of the Supreme Court injunction. Whilst it is true that the injunction makes provision for the respondents to apply for such leave, the primary purpose of the injunction should be taken into consideration *viz.* that the *status quo* be preserved until the final disposal of the Seremban suit. The leave provision was included for special circumstances that may arise. Both in the Court below and before us, there were no special circumstances that would justify granting the leave which will in effect result in dissolving the injunction. Several other issues were raised in this appeal but in our judgment on this ground alone the appeal should be allowed.

For the reasons stated, we allow the appeal with costs here and below. The order of the High Court dated 9 September 1991 is set aside and the injunction of this Court to continue to remain in force until the final disposal of the Seremban suit.

Deposit to be refunded to the appellants.